U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36322060

Date: MAR. 03, 2025

Certification of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a semi-truck driver, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner had not established eligibility for the EB-2 immigrant classification as an individual of exceptional ability. On appeal, we determined the Director did not consider the Petitioner's eligibility for the underlying EB-2 classification as a member of the professions with an advanced degree. We, therefore, withdrew the Director's decision and remanded the matter for consideration and entry of a new decision which, if adverse, was to be certified to us for review. The Director, again, denied the petition, concluding that the Petitioner did not demonstrate his eligibility for the underlying EB-2 immigrant classification as either a member of the professions holding an advanced degree or an individual of exceptional ability. In addition, the Director concluded the Petitioner did not establish eligibility for the requested national interest waiver. The matter is now before us on certification from the Director. 8 C.F.R. § 103.4(a).[1]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's*, Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will affirm the Director's denial of the petition.

[1] The Director's initial certified decision dated June 17, 2024, did not contain, as required, a Form I-290C, Notice of Certification, notifying the Petitioner of the right to submit a brief to us within 30 days of the notice. See 8 C.F.R. § 103.4(a)(2). Therefore, on December 9, 2024, the decision was re-mailed to the Petitioner with the required Form I-290C. The Petitioner has submitted a brief for this certification. In addition, we rejected the Petitioner's appeal of the Director's certified decision, because the Director's decision has been certified to our office for review.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. Id. Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[2] Id.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

II. ANALYSIS

To qualify for the underlying EB-2 classification, the Petitioner contends he is a member of the professions holding an advanced degree, having earned the foreign equivalent of a U.S. bachelor's degree followed by five years of progressive experience in his specialty.[4] Upon de novo review, the Petitioner has not established qualifying for the EB-2 classification as a member of the professions holding an advanced degree.

The regulation at 8 C.F.R. § 204.5(k)(2) defines a profession as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Here, the Petitioner has not demonstrated his occupation has a minimum entry requirement of a U.S. baccalaureate degree or its foreign equivalent or is otherwise defined as a profession under regulation at 8 C.F.R. § 204.5(k)(2).

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[2] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[3] See Flores v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[4] In his appeal, the Petitioner did not raise his eligibility for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. See section 203(b)(2) of the Act. Therefore, we deemed that the Petitioner waived such claim.

The Petitioner did not complete portions of his petition, including Part 6, questions 2 and 3, which requests information about the Petitioner's proposed employment in the United States. While the Petitioner stated he intends to have the job title of entrepreneur, he did not indicate a proposed standard occupation classification (SOC) code,[5] having left this section blank. For the nontechnical job description of his proposed employment, he stated such description was included in attached documents. In his statement, the Petitioner explains that he currently works as a semi-truck driver and proposes to seek "employment in the field of trucking [sic] industry, eventually owning and operating his own trucking company, which will be engaged in interstate transportation." In his business plan, he indicates that he would drive trucks and manage the trucking business. His trucking business would provide dispatcher services for transportation companies by responding to emergency and non-emergency calls, monitoring routes, and recording information to assist first responders, truck drivers, and other stakeholders.

According to the U.S. Department of Labor, the educational requirement for occupations under SOC code 43-5032.00, "Dispatchers, Except Police, Fire, and Ambulance," and under SOC code 53-3032.00, "Heavy and Tractor-Trailer Truck Drivers," states, "usually require a high school diploma." See U.S. Department of Labor, O*NET Summary Report for "Dispatchers, Except Police, Fire, and Ambulance," https://www.onetonline.org/link/summary/43-5032.00; see also U.S. Department of Labor, O*NET Summary Report for "Heavy and Tractor-Trailer Truck Drivers," https://www.onetonline.org/link/summary/53-3032.00. Without further evidence, the Petitioner has not demonstrated his proposed work as a truck driver and manager of a truck dispatching business requires the minimum of a U.S. bachelor's degree or its foreign equivalent. Because the Petitioner has not established that he is a member of the professions under 8 C.F.R. 204.5(k)(2), he is not eligible to be classified as a member of the professions with an advanced degree. 8 C.F.R. § 204.5(k)(l).

In addition, the Petitioner has not demonstrated his degree is the foreign equivalent of a U.S. bachelor's degree. The Petitioner submitted a diploma and an academic transcript from [redacted] indicating he was awarded a bachelor's degree in the specialty of philology and teaching languages in 2010. While the Petitioner maintains his diploma is the foreign equivalent of a U.S. bachelor's degree, he did not submit an evaluation or other evidence to support such claims. The Petitioner must support his assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

According to the educational credentials for Uzbekistan as set out by the American Association of Collegiate Registrars and Admissions Officers' (AACRAO)[6] in the Electronic Database for Global Education (EDGE), a bachelor's diploma is awarded after a four-year program in all fields of study, except for nursing, dentistry, and medicine. Here, however, the Petitioner's academic records contradict the educational credentials for a bachelor's diploma in Uzbekistan. The Petitioner attended the institute for three years, instead of four years, having been admitted to the institute in 2007 and earning his diploma three years later in July 2010. Without further evidence, the Petitioner has not demonstrated he has earned the foreign equivalent of a U.S. bachelor's degree, or otherwise has an advanced degree.

[5] An SOC code is a statistical standard that federal agencies use to classify workers into job-related categories. See U.S. Bureau of Labor Statistics, "Standard Occupational Classification," https://www.bls.gov/soc/.

[6] AACRAO is a nonprofit professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries. See http://www.aacrao.org/who-we-are.

Lastly, the Petitioner has not demonstrated five years of post-baccalaureate experience in his specialty. While the evidence indicates the Petitioner has five years of experience, such experience is not in the Petitioner's intended specialty. A letter from the Petitioner's former employer states he worked from 2015 to 2021 as a supervisor attending to their club guests to ensure they had an enjoyable stay. Another letter dated in January 2020 provides a vague statement of the Petitioner's work, indicating he had been a contractor since September 2019. The Petitioner argues that his experience and specialty are in management, linguistics, and communications, which is needed for his intended work of managing and driving for his truck dispatch business. While management, linguistics, and communications skills may be helpful to the Petitioner's proposed work in the United States, his work experience supervising club guests' services and being a contractor is not in his specific intended specialty of managing and driving for a truck dispatcher business. The employment letters, therefore, do not show the Petitioner has five years of progressive experience in his intended specialty.

For the above stated reasons, the Petitioner has not established he qualifies for the underlying EB-2 classification as a member of the professions holding an advanced degree.

III. CONCLUSION

The Petitioner has not established his qualification for the underlying EB-2 classification as a member of the professions with an advanced degree and is, therefore, ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the Dhanasar analytical framework and is otherwise eligible for the national interest waiver, we reserve our opinion regarding these issues. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The petition will be denied for the above stated reasons.

ORDER: The petition is denied.